IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION No.13964 of 2004

Between:

M/s. Bharat Metal Box Company Ltd. 109, A-B, Sri Venkateswara

Co-operative Industrial Estate, Bollaram Village, Narsapur Mandal,

Medak District, Rep byits Managing Director, Sri Prakash Agarwal.

..... PETITIONER

AND

1 The Commissioner, Provident Fund, Provident Fund Office,
Bharkatpura, Hyderabad.
2 The Assistant Provident Fund Commissioner (Recovery) Sub-Account

Office, 12-1, Susheeram Complex, Pantancheru, Medak District.
3 The Recovery Officer, Employment Provident Fund Office,
Sub-Accounts Office, Patancheru, Medak District.
4 The Enforcement Officer, Dept of Employees Provident Fund

Organisation, Patancheru, Medak District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction, particularly a writ in the nature of Mandamus declaring the action of the Respondents herein in issuing the proceedings No. AP/SAO/PTC/2798/ENF(Rec)/Auction/2004/734, Dt. 16-7-2004 while the appeal No. 328/2003 is pending before the Appellate Authority (AAIFR).

Counsel for the Petitioner: MR.K.S.R. MURTHY, Advocate, representing MR.K.V.SUBRAMANYA NARASU, Advocate

Counsel for the Respondent No.: MR.R.N.REDDY (SC FOR EMPLOY'S PF ORG.)

The Court at the admission stage made the following:

ORDER:

The petitioner is a small scale industry and is covered by the provisions of Employees Provident Fund Miscellaneous Provisions Act, 1952. The petitioner sought a reference under the provisions of Sick Industrial Companies (Special Provisions) Act (SICA), 1985. The Board for Industrial and Financial Reconstruction (BIFR) however dismissed the reference and recommended to the High Court to pass an order of winding up. The same was registered as R.C.C. No.8 of 2003 before this Court. In the mean while, the petitioner preferred an appeal before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) being Appeal No.328 of 2003 and when this was brought to the notice of this Court, this Court having regard to Section 22 of the SICA closed RCC No.8 of 2003.

The first respondent herein initiated proceedings for recovery of Provident Fund arrears and issued orders on 10.11.2003 restraining the petitioner from transferring or charging the property. The fourth respondent attached A.C. Generators of the Company pursuant to the orders of the first respondent. A recovery certificate was also issued by the second respondent. The Assistant Commissioner proposed to auction the properties and accordingly attached the properties. Before auctioning it, so as to give another opportunity to the petitioner-company, the second respondent by letter dated 16.7.2004 directed the petitioner to liquidate the P.F. arrears duly informing the petitioner that further steps will be taken for auctioning the attached properties. Assailing the letter dated 16.7.2004 issued by the second respondent, the petitioner approached this Court by filing the present writ petition seeking invalidation of the auction of the second respondent.

The learned counsel for the petitioner Sri K.S.R. Murthy submits that in view of the provisions of Section 22 of the SICA, all proceedings for recovery of P.F. arrears against the petitioner company stands stayed, and therefore, the respondents cannot attach the properties and cannot bring them to sale.

The submission made by the learned counsel is misconceived. A Division Bench of this Court, to which I was a member, in **Sarvaraya Textiles Limited v. Commissioner, EPF Commission** considered the question whether having regard to the provisions of Section 22(1) of the SICA, the recovery proceedings by the Provident Fund Establishment could be stayed? The question was answered in the native holding thus:

“In the light of the provisions of EPF Act and the scheme framed thereunder, we are of the view that the rights of the employees under the Provident Scheme are protected and the proceedings under the EPF Act do not come within the purview of the provisions of Section

22(1) of SICA. An amendment to the EPF Act was made by Act 33 of 1988 in terms whereof Section 14-Bhas been introduced. Under Section 14-B, where an employer makes default in the payment of any contribution to the Fund, the Central Provident Fund Commissioner has been authorised to recover damages by way of penalty not exceeding the amount of arrears. However, under the proviso appended thereto, the Central Board has been empowered to reduce the quantum of damages that may be required to be paid by a company in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the BIFR subject to such terms and conditions as may be specified in the scheme. When the provisions of Section 14-B were inserted, the Parliament took cognizance of the provisions of the EPF Act and in its wisdom only the recovery of damages was permitted to be reduced or waived subject to the conditions provided thereunder. Even the conditions specified in Para 32-B of the Scheme does not provide for any provision exempting a sick company from withholding the PF contributions collected from the wages of the employees or prohibiting the authority under the EPF Act from proceeding against such employers who defaulted to remit the contributions collected from the wages of the employees to the PF Fund, in accordance with the provisions of the EPF Act."

The submission of the learned counsel is therefore misconceived and has no merit. Further the petitioner has not challenged the attachment order as such. He has only challenged a communication of the second respondent affording one more and final opportunity to remit the arrears of P.F. Indeed, the second respondent has shown indulgence to the petitioner and the petitioner has not made out any grievance.

The writ petition is misconceived and is accordingly dismissed.

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Date : August 09, 2004. **V.V.S. RAO, J**

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner, Provident Fund, Provident Fund Office,
Bharkatpura, Hyderabad.
2 The Assistant Provident Fund Commissioner (Recovery) Sub-Account

Office, 12-1, Susheeram Complex, Pantancheru, Medak District.
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5 Two CD copies.